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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,161	06/26/2003	Muneyoshi Ikeda	03369/LH	7860
1933	7590	05/04/2005	EXAMINER	
FRISHAUF, HOLTZ, GOODMAN & CHICK, PC 767 THIRD AVENUE 25TH FLOOR NEW YORK, NY 10017-2023			LOPEZ, FRANK D	
			ART UNIT	PAPER NUMBER
			3745	

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/609,161	IKEDA ET AL.	
	Examiner	Art Unit	
	F. Daniel Lopez	3745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on January 31, 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 9-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 9-16 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 1/31/05 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

Response to Amendment

Applicant's arguments filed January 31, 2005, have been fully considered but they are not deemed to be persuasive.

Applicant argues that Morishita does not disclose a controller outputting a speed reduction command to reduce the swing speed gradually from a speed reduction starting position to an angle short of a stroke end of a swing to the stroke end, since the current level is reduced from a first level (I1) to a second level (I2), which is maintained until the stroke end (e.g. fig 7), or through various levels (e.g. fig 10), to a maintained current level (I4). What applicant says about the current levels is correct, but fig 6 clearly shows the flow rates through the flow lines (28, 29), which indicates that the flow rates are gradually reduced to a stroke end (0 or 180 degrees). Since the speed is directly related to the flow rate, fig 6 clearly indicates that the speed is gradually reduced. Therefore, Morishita clearly meets this limitation.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Claims 9, 13 and 15 are rejected under 35 U.S.C. § 102(b) as being anticipated by Morishita (see discussion below, under 103 rejection, for the limitations of claim1, see fig 10 concerning the limitations of claims 5 and 7). The examiner understands that the claimed swing control apparatus includes a working machine attached to a portion of a connected machine by a swing pin, and that the details of the connected machine (i.e. that it has a revolving superstructure) is intended use and therefore is not given patentable weight. If applicant intends that the details of the connected machine be a part of the claimed invention and the claims are so modified; the claims would not be allowed based on a 103 rejection, using Morishita and another reference, such as Japan 63206535.

Claim Rejections - 35 USC § 103

Claims 10-12, 14 and 16 are rejected under 35 U.S.C. § 103 as being unpatentable over Morishita. Morishita discloses a swing control apparatus comprising a working machine (7) attached to a portion of a connected machine (4) by upper and lower swing pins separated along a vertical axis (P1); a swing angle detector (30) for detecting a swing angle of the working machine, disposed along the vertical axis (e.g. column 6 line 51-53); a hydraulic actuator (9, 10) swingingly drives the working machine; wherein an electromagnetic proportional operation valve (19) controls the flow rate of pressure oil supplied to the actuator; wherein a controller outputs a speed reduction command (see e.g. fig 6, 7 or 10), to reduce the swing speed gradually from a position of a predetermined angle short of the stroke end of the swing toward the stroke end, based on the swing angle signal from the swing angle detector, to the operation valve; but does not disclose that the swing angle detector is provided at a lower end portion of the upper swing pin; that there is proportional electromagnetic valves capable of controlling pilot pressure for operating the operation valve, where in the controller outputs the speed reduction command to the proportional electromagnetic valves.

Since the swing angle detector of Morishita is provided along the vertical axis of the swing pin, it must be provided either at an upper or lower end portion of the upper swing pin, or at an upper or lower end portion of the lower swing pin. Since providing the swing angle detector at either an upper end portion of the upper swing pin, or a lower end portion of the lower swing pin would place it in danger of being damaged by things falling onto it or being thrown up into it, respectively, one having ordinary skill in this art would place the swing angle detector of Morishita at either a lower end portion of the upper swing pin, or at an upper end portion of the lower swing pin, to protect it from damage. Since this includes the swing angle detector being provided at a lower end portion of the upper swing pin, it meets the limitation of claims 2, 4, 6 and 8.

Official notice is taken, for valves controlling flow to a hydraulic actuator, that a variety of valves are functionally equivalent to each other, including an electromagnetic proportional operation valve and proportional electromagnetic valves controlling pilot pressure for operating a pilot operated operation valve. Since an electromagnetic

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proportional operation valve and proportional electromagnetic valves controlling pilot pressure for operating a pilot operated operation valve are functionally equivalent in the hydraulic actuator art, it would have been obvious at the time the invention was made to one having ordinary skill in the art to replace the electromagnetic proportional operation valve of Morishita with proportional electromagnetic valves controlling pilot pressure for operating a pilot operated operation valve, as a matter of engineering expediency.

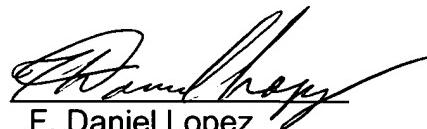
Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is 571-272-4821. The examiner can normally be reached on Monday-Thursday from 6:15 AM -3:45 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The fax number for this group is (703) 872-9302. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.



F. Daniel Lopez
Primary Examiner
Art Unit 3745
May 02, 2005